IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:-18-04-2005

Coram:
The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.K. KRISHNAN

Writ Appeal No. 491 of 2001

and C.M.P.No. 3910 of 2001

The Management of
Aurofood Private Limited,
Auroville-605 101. .. Appellant/First Respondent in W.P.No.69/94

Vs.

1.S. Rajulu, ..Petitioner.

2. The Presiding Officer,
Labour Court, Cuddalore. ..2nd Respondent.

..Respondents/ Petitioners and 2nd Respondent in

do_

Writ Appeal filed under Clause 15 of Letters Patent, against order of Single Judge dated 9-2-2001 in Writ Petition No. 69 of 1994.

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Mr. S. Ravindran for M/s. T.S. Gopalan:- For Appellant.

Mr. N.G.R. Prasad for M/s. Row and Reddy:- For 1st Respondent.

JUDGEMENT

(Judgement of the Court was delivered by *P. Sathasivam, J.*,)

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The Management of Aurofood Private Limited, aggrieved by the order of the learned Single Judge dated 9-2-2001, made in Writ Petition No. 69 of 1994, has filed the above Writ Appeal.

2. Brief facts which are required for the disposal of this Appeal alone are stated hereunder:

First respondent herein was employed as a packer in the packing department of appellant biscuit factory from 6-4-1974. While so, in 1981 he was served with two charge memos. The first charge memo dated 28-4-1981 relates to misconduct that he was found eating biscuits while he was packing the biscuits and the second charge memo dated 11-8-1981 is that he had abused his supervisor in filthy language. It is not in dispute that an enquiry was conducted on the said charges and ultimately he was found guilty of both the charges. Thereafter, the management issued a show cause notice on 13-10-1981 proposing to dismiss him from service to which he submitted his explanation on 19-10-1981. The management not satisfied with his explanation dismissed him from service by order dated 5-11-1981. Aggrieved by the same, the workman raised an industrial dispute in I.D.No. 41/92 before the Labour Court, Cuddalore/2nd respondent herein. By award dated 30-3-1993, the Labour Court upheld the order of dismissal dated 5-11-1981 and confirmed the order of dismissal. Questioning the same, the workman preferred Writ Petition No. 69/94 before the learned Single Judge of this Court. By the impugned order, the learned Judge, after finding that though the management took the records of past service into account for the purpose of imposing the punishment of dismissal, no opportunity was given to him, set aside the order of dismissal and ordered reinstatement with back wages except for the period of delay of 3 years with continuity of service etc. Questioning the same, the management has filed the present appeal.

3. Heard Mr. S. Ravindran, learned counsel for the appellant-management; and Mr. N.G.R. Prasad, learned counsel for first respondent-workman.

4. There is no dispute that in respect of two charges leveled against the workman, an enquiry was conducted and ultimately both the charges were found proved and after notice to him, he was dismissed from service. Though at this stage there is no need to go into the details regarding charges, however, considering the gravity of the punishment, namely, dismissal, it is desirable to refer both the charges. The charges relate to that on 24-4-1981 while he was on duty at about 9-10 A.M. the workman was found sitting leisurely, eating biscuits near the packing material stores. When he was

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questioned by the supervisor, he abused him in filthy language. The exact charges are reproduced in pages 18 and 19 of the typed-set of papers filed by the counsel for the appellant and we also verified the same.

5. Now let us consider the order of dismissal dated 5-11-81. At this juncture, Mr. N.G.R. Prasad, learned counsel for the workman, by drawing our attention to the fact that the workman being a last grade servant, namely, packer working in the packing department, was unable to understand the materials placed and the procedure that was followed in the enquiry, requested the management to furnish required materials in the language known to him, namely, in Tamil. It is also brought to our notice that the workman has made a specific request for supply of relevant materials in Tamil language. The communication of the management shows that his request was not acceded to and the fact remains that the workman was not given relevant materials/documents in the language known to him. According to Mr. Prasad, that was the reason that the workman did not send explanation to the second show cause notice till final order passed on 5-11-1981. We also verified the grievance expressed by the workman seeking required materials in Tamil language and the intimation of the management declining his request and we are satisfied that Mr. N.G.R. Prasad is right in contending that the workman was not given adequate opportunity to put-forth his defence.

6. Though Mr. S. Ravindran, learned counsel for the appellant-management, contended that the management has not taken into consideration the past service records and the outcome of two charges leveled against him alone were sufficient and accordingly the management passed an order dismissing him from service. On going through the order of dismissal dated 5-11-81, we are unable to accept the said contention, since in the penultimate paragraph it is stated that, "This order of dismissal has been passed after having taken into account the gravity of the misconducts committed by you and your antecedents and other extenuating and aggravated circumstances". As rightly observed by the learned Single Judge, though the management has considered the antecedents of the workman, absolutely no details have been furnished and the same were not put on notice to the workman in order to making effective representation in respect of the proposed punishment. As rightly stated, mere reference to the past record of service would not satisfy/comply the principles of natural justice. It is true that the management is free to impose appropriate punishment even on a solitary incident, but as correctly observed by the learned Judge, if the management refers to the antecedents or past record of service while inflicting punishment, it is but proper for them to see that

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opportunity was given to the workman to make his case/defence over his past record of service while imposing major punishment of dismissal. Though the Labour Court has failed to consider the said aspect, the same was rightly considered and accepted by the learned Single Judge and we are in agreement with the said conclusion. Though Mr. S. Ravindran, learned counsel for the appellant, relied upon a decision of the Apex Court in N.T.C (WBAB & O) Ltd., v. Anjan K. Saha, reported in 2004 (4) CTC 455, on going through the factual details, we are of the view that the same is not applicable to the case on hand.

7. It is also contended by the learned counsel for the appellant that the workman has not raised the plea, namely, that he was not afforded opportunity with regard to past record of service. By relying on a decision of the Supreme Court in Municipal Committee Tauru v. Harpal Singh, reported in (1998) 5 Supreme Court Cases 635, the counsel would contend that even in labour matters there must be a specific plea or defence and in the absence of the same, no relevance can be granted by the Court. According to him, there is no such plea in the claim petition filed by the workman. It is true that in the said decision, Their Lordships have held that even in labour matters a claimant goes before the Court or Tribunal with a case and it is upon the merits of that case that relief is to be granted or refused to him. They further held that there is no substantial justice when the Court or Tribunal gives relief to a workman which is on a basis that is totally contrary to the basis upon which he approached it; which, indeed is the employer's case. They also held that substantial justice must be done both to the employer and he employees. Though specific plea was not taken, but if we read the entire claim petition, we are able to see the grievance of the petitioner and we are satisfied that such objection has been taken though not directly, accordingly the said decision is also not helpful to the appellant's case.

8. The learned counsel for the appellant by relying on a decision of the learned Single Judge of this Court in N. Karunakaran v. P.O., Labour Court, reported in 2000 (1) L.L.N. 299, would contend that since the workman was given adequate opportunity at the time of enquiry, the management is right in considering his antecedents while passing the order of dismissal. A perusal of the said decision shows that the management before the learned Single Judge had chosen to lead evidence before the Labour Court with reference to the past conduct of the workman and the workman had ample opportunity to cross-examine the witness who was examined on behalf of the company with reference to the past

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conduct of the workman. In such a circumstance, the learned Single Judge has arrived at a conclusion that the submission that the past conduct of the workman was taken into account without affording an opportunity to the petitioner as the witness who was examined before the Labour Court and the petitioner had the opportunity to cross-examine the witness and the Labour Court has found that the past conduct of the petitioner was proved by the evidence let in on behalf of the management. While agreeing with the proposition of law, the factual position in our case differs since we have already referred to the grievance of the workman that he was not given materials in the language known to him and he being a last grade servant, it cannot be construed that he was given adequate opportunity, as provided in the case before the learned Judge; accordingly, the said decision is not helpful to the appellant's case.

9. Finally, Mr. S. Ravindran by relying on a latest judgement of the Supreme Court in Mahindra and Mahindra Ltd., v. N.B. Narawade, reported in (2005) 3 Supreme Court Cases 134, would contend that in view of the fact that one of the charges namely, use of filthy language to his superior has been proved, the management is justified in imposing the punishment of dismissal. In the reported decision, it is seen (para 9) that the workman concerned had been charge sheeted several times earlier and on every such case of misconduct, the management took a lenient view and imposed minor punishments. It is further seen that on 6-9-1988 the said workman had assaulted his co-worker with a galvanized pipe weighing about 2 Kg causing grievous injury. Even in such a situation, the workman therein was only punished with suspension of four days. In the last incident, when his supervisor asked him to do a particular job which was entrusted to him, he allegedly told the supervisor to call the Engineer-in-charge so that he could talk to him rather than the supervisor and when the Engineer came and requested him to carry on with the work, he abused the supervisor in very filthy language in the presence of his subordinates and later on when the Engineer went back to his cabin he followed him to the cabin and again abused him in the presence of a member of the labour union in similar language and even threatened him. In those circumstances, the Hon'ble Supreme Court while disagreeing with the labour court and the High Court, upheld the order of dismissal imposed by the management. In the case on hand, we have already referred to the charges leveled against the workman. The first one is that he was eating biscuits while doing the work of packing biscuits and the next one is when the same was questioned by his supervisor, the workman replied that he (supervisor) also committed the same on several occasions. In the case on hand, the person

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questioned is a supervisor and the way in which the workman replied shows that the supervisor was also in the habit of eating biscuits during working hours and that was the reason which provoked the workman to reply harshly questioning the conduct of his supervisor. We must also consider the above referred surrounding circumstances that the workman being illiterate last grade servant (packer). All these aspects including surrounding circumstances have been rightly taken note by the learned Judge while considering the punishment inflicted on him. After analyzing all the details, we are satisfied that the case before the Supreme Court is very harsh which made the Supreme Court in confirming the order of dismissal. In the light of our discussion, and the factual details which we have already referred to, the same rigor may not be applied to the case on hand; accordingly the said decision is also distinguishable and not applicable to the case on hand.

10. We are satisfied that the learned Judge has considered all the materials, including the surrounding circumstances while interfering with the order of the Labour Court. As rightly observed by the learned Judge, though the Labour Court is vested with the power to interfere with the punishment under Section 11-A of the Industrial Disputes Act, 1947, the same has not been considered and the learned Judge after finding that there is a violation of natural justice, considering the surrounding circumstances, the workman being an illiterate last grade servant (packer) and of the fact that the punishment of dismissal shocks the conscience of the Court, rightly interfered and set aside the order of dismissal and ordered reinstatement with back wages. It is also relevant to mention that taking note of the delay of 3 years in approaching the Labour Court, the learned Judge has rightly dis-allowed the back wages for a period of 3 years. We are in agreement with both the conclusions of the learned Judge and there is no merit in the appeal filed by the management; accordingly the Writ Appeal fails and the same is dismissed. No costs. Connected C.M.P. is closed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

R.B.

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To:-

1. The Presiding Officer, Labour Court, Cuddalore.

+1cc to Mr.T.S.Gopalan,Advocate SR.No.18327

+1cc to M/S Row and Reddy,Advocate sR.No.18156

JRG(CO)

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and CMP No. 3910 of 2001.

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